IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

W.P.(C).No. 20440 of 2006(G)

AGAINST THE ORDER IN EP.81/05 IN EA.20/06 IN
OS.143/1995 of PRINCIPAL SUB COURT,KOCHI

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PETITIONERS:

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1. PHILOMINA, W/O.PEELI, AGED 66,
   PALLIPARAMBIL HOUSE, C.C.12/286, PANDIKUDY,
   KOCHI-2.

2. JAMMA, D/O.PHILOMINA, AGED 39,
   PALLIPARAMBIL HOUSE, C.C.12/286, PANDIKUDY,
   KOCHI-2.

3. SHIJI, S/O.PHILOMINA, AGED 35,
   PALLIPARAMBIL HOUSE, C.C.12/286,
   PANDIKUDY, KOCHI-2.

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENT:

ANTONY, S/O.PETER, AGED 45,
`KUNNEL HOUSE', PANDIKUDY, KOCHI-2.

BY ADV. SRI.S.VINOD BHAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE E.P. NO.81/2005 IN O.S.143/95 ON THE FILE OF PRL. SUB COURT, KOCHI.

EXT.P2: E.P.81/2005 IN O.S.143/1995 ON THE FILE OF PRL. SUB COURT, KOCHI.

EXT.P3: COPY OF E.A.20/2006 IN E.P.81/2005 IN O.S.143/1995.

EXT.P4: COPY OF E.A.21/2006 TO ACCEPT THE OBJECTION IN E.P.81/2005 IN O.S.143/1995.

RESPONDENTS EXHIBIT:

EXT.R1: COPY OF THE CALCULATION STATEMENT DATED NIL.

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN, J.

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W.P.(C)NO.20440 OF 2006

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Dated this the 1st day of February 2007

JUDGMENT

This writ petition is filed to direct the Principal Sub Court, Kochi to adjudicate the questions raised in Ext.P2 objection before proceeding further and before confirmation of sale. Heard both sides. It is submitted that the property has been sold and it is awaiting confirmation of sale. The learned counsel for the decree holder would submit that the judgment debtor was directed to file a counter within a stipulated time and as it was not filed the executing court did not consider it. On the other hand, learned counsel for the writ petitioner would submit that he had filed a counter within a stipulated time and as it was not brought to the bench it was not considered by the executing court. It is also submitted by both sides that amount has been paid towards the decree debt and only balance is due. The decree holder also submits that he is not very much concerned about the property and but about the amount due to him. Therefore, if the decree amount is properly determined and the entire amount is paid the judgment debtor need not be put into the hardship of losing his property.

The learned counsel would submit that the objections filed by him may be ordered to be considered by the executing court. I feel that as the objection is available before me the matter need not be protracted for that purpose. The first objection is regarding the fact that the judgment debtor issued a registered notice expressing his willingness to pay the amount for which the decree holder did not respond properly and therefore he is not liable to pay interest. Under the provisions of Civil Procedure Code as well as the general principles of law when an amount is due to a decree holder from a judgment debtor the law enables the judgment debtor to deposit that amount after giving due notice to the decree holder. Merely by sending notice, it cannot be considered as a discharge. It cannot deprive the decree holder from getting interest. Therefore, the said contention is rejected. The second contention is regarding the cost. The matter was taken up in appeal and the appellate court dismissed the appeal without cost. It does not mean that the cost ordered by the trial court is to be disturbed with. So the said challenge also cannot be accepted. As far as the 3rd objection is concerned, the contention is that the decree holder is not entitled

to get the cost of execution. That challenge also cannot be accepted in the light of the settled principles of law. So all these objections are not tenable and are only to be rejected.

2. At the same time, the decree holder is willing to accept the balance amount due and as he is not pressing for getting confirmation of sale of property, it is just and appropriate for the decree holder to file a statement before the executing court regarding the actual balance due to him as envisaged by law. On giving a copy to the judgment debtor, judgment debtor shall pay the amount in full and final satisfaction of the decree amount. Till then executing court is directed not to effect confirmation of sale. Both parties are directed to appear before the executing court on 20-2-2007.

Writ petition is disposed of.

M.N.KRISHNAN, JUDGE

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